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DELMARVA POWER & LIGHT COMPANY)
)
Appellant)

OPINION AND ORDER ON APPEAL
FROM THE STATE PLANNER: AFFIRMED

(July 3, 1974)

E. Dickinson Griffenberg, Jr., Esquire; Potter, Anderson & Corroon,
Wilmington, Delaware for Appellant

Lester Taufen, Deputy Attorney General, Wilmington, Delaware for
the State Planning Office

This matter comes before the Coastal Zone Industrial Control Board under §7007(a) of the Coastal Zone Act (hereinafter "Act"), which permits an appeal from any (final) decision of the State Planner with respect to the applicability of any provisions of the Coastal Zone Act. Delmarva Power & Light Company (hereinafter "Delmarva") has appealed the decision of the State Planner which found that a proposal by Delmarva to construct a water pumping system within the Coastal Zone would require Delmarva to obtain a permit since such a use under the circumstances of this case would be a "manufacturing" use as that term is defined by §7002(d) of the Act.

The State Planner is required by 7 D.C. §7005 to initially determine whether or not a proposed use is a heavy industry use, a use allowable only by permit, or a use requiring

on September 21, 1973. After considerable research by members of the Planning Office staff the State Planner determined, on April 23, 1974, that the proposed facility was a manufacturing use and that a permit was required. A notice of appeal was filed by Delmarva on May 6, 1974.

The use which was determined by the State Planner to require a permit is a water pumping system which it is conceded by both Delmarva and the State Planner is an integral and essential part of the proposed Nuclear Generating facility at Summit. It was mentioned by witnesses for the appellant that the Nuclear Generating facility could not operate without the water cooling system at issue in this appeal.

Delmarva contends that since the water pumping facility in and of itself would not comprise a manufacturing use as that term is defined and since the rest of the Nuclear Generating facility is to be located outside the geographical area of the Coastal Zone; therefore the State Planner's decision is in error. This argument of Delmarva, however, ignores the reality of the situation involved in this appeal.

The purpose of the Coastal Zone Act is clear. It is to "control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism." 7 Del. C. §7001. In carrying out that function

the State Planner must make a determination as to whether or not the proposed industrial development is a use which requires a permit.

In making that determination the State Planner must be able to look at the complete use being made of the industrial development. That is to say the State Planner must consider the facility as a whole in determining whether or not that portion of the facility to be constructed within the Coastal Zone is, in fact, part of the manufacturing use.

In the present circumstances of this case there is no dispute but that the Nuclear Generation of electric power would be at least a manufacturing use as that term is defined in the Act. The only question which remains to be decided on this appeal is whether or not the State Planner properly can consider that portion of the facility which is located outside of the Coastal Zone in rendering his status decision. Under the circumstances of this case it is clear that he can.

Delmarva does not contend that the water cooling system is not an absolutely essential integral part of the Nuclear Generating facility. Clearly such a cooling system is essential to the functioning of any Nuclear Generating facility. There is no doubt, therefore, but that this facility is a single integral unit. Part of that unit is located within the Coastal Zone.

The purpose and intent of the Coastal Zone Act would be rendered meaningless if it were to be decided that only those elements of a facility which were located within the coastal zone geographical area could be considered in determining whether or not a permit should issue. This is true only where, as here, the industrial construction to be located within the Coastal Zone is an essential and integral part of the facility as a whole.

It is also clear, however, that in reaching this decision we do not wish to imply that the entire generating facility's environmental impact on the community must be studied by the State Planner. Rather, the State Planner should restrict his investigation to those aspects of the plant which directly affect the Coastal Zone area. In this case that would be those aspects of the total facility which directly relate to the water cooling system.

BEFORE THE COASTAL ZONE INDUSTRIAL CONTROL BOARD
OF THE STATE OF DELAWARE

DELMARVA POWER & LIGHT COMPANY)
)
Appellant)

ORDER

And NOW, to wit, this 3rd day of July, 1974, a public hearing having been held on May 23, 1974, and it appearing that the appellant did not establish that the proposed water cooling system is not a "manufacturing" use as that term is defined by the Coastal Zone Act,

THEREFORE and for the reasons stated in this Board's opinion of July 3, 1974 the decision of the State Planner be and is hereby affirmed, and it is further suggested to the State Planner that he limit the scope of his investigation with regard to issue of a permit to those aspects of the facility which are directly related to the water cooling system.

COASTAL ZONE INDUSTRIAL CONTROL BOARD

By:

Chairman

Richard S. Gofe, State Solicitor
Attorney for Coastal Zone Industrial
Control Board

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